

## **PART 15 — CONTRACTING BY NEGOTIATION**

### **TABLE OF CONTENTS**

#### **SUBPART 15.2 — SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION.**

##### **15.204 Contract format.**

#### **SUBPART 15.4 — CONTRACT PRICING**

##### **15.404 Proposal analysis.**

15.404-4 Profit.

15.404-73 Alternate structured approaches.

15.404-73-100 Alternate structured approach for construction contracts.

15.404-73-101 Alternate structured approach for architect-engineer contracts.

##### **15.406 – Documentation.**

15.406-1-- Prenegotiation objectives.

15.406-3 – Documenting the negotiation.

##### **15.490 – Follow-up on contract audit reports.**

15.490-1 Responsibilities.

15.490-2 Tracking of contract audit report recommendations.

15.490-3 Reporting.

15.490-4 Overaged Audit Review Boards.

#### **SUBPART 15.5 — PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES**

##### **15.503 Notifications to unsuccessful offerors.**

##### **15.505 Preaward debriefing of offerors.**

## ENGINEER FAR SUPPLEMENT (EFARS)

### PART 15 — CONTRACTING BY NEGOTIATION

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#### SUBPART 15.2—SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

**15.204 – Contract format.** (a) For Architect-Engineer contracts, use the Uniform Contract Format (UCF). For construction contracts, use the USACE format at EFARS 14.201-1(a)(1) in lieu of the UCF.

#### SUBPART 15.4 — CONTRACT PRICING

##### 15.404-4 — Profit.

##### 15.404-73 Alternate structured approaches.

(b)(2)(S-100) Facilities capital cost of money shall not apply to contracts where reimbursement is provided to contractors through construction equipment use rates or allowances (see FAR 31.105(d)). In other situations where facilities capital cost of money is proposed and verified, follow the offset procedure in DFARS 215.404-73(b)(2).

##### 15.404-73-100 Alternate structured approach for construction contracts.

(a) The following alternate structured approach shall be used for all fixed-price construction contract actions. For cost reimbursement contracts, the weighted guidelines method described at DFARS 215.404-71 shall be used.

(b) Based on the circumstances of the procure-

Factor	Rate	Weight	Value
Degree of risk	20		
Relative difficulty of work	15		
Size of job	15		
Period of performance	15		
Contractor's investment	5		
Assistance by Government	5		
Subcontracting	25		
TOTAL	100%		

ment action, each of the above factors shall be weighted from .03 to .12 as indicated below. "Value" shall be obtained by multiplying the rate by the weight. The Value column when totaled indicates the fair and reasonable profit percentage under the circumstances of the particular procurement.

(1) Degree of risk. Where the work involves no risk or the degree of risk is very small, the weighting should be .03; as the degree of risk increases, the weighting should be increased up to a maximum of .12. Lump sum items shall generally have a higher weight than unit price items. Consider the nature of the work and where it is to be performed. Also consider the portion of the work to be done by subcontractors, amount and type of labor included in costs and whether the negotiation is before or after performance of the work. Modifications settled before the fact have much greater risk than those settled after the fact. A weight of .03 is appropriate for after the fact equitable adjustments and/or settlements.

(2) Relative Difficulty of Work. If the work is difficult and complex, the weight should be .12 and should be proportionately reduced to .03 on the simplest of jobs. This factor is tied in to some extent with the degree of risk. Other things to consider are the nature of the work, by whom it is to be done (i.e., subcontractors, consultants), etc.

## ENGINEER FAR SUPPLEMENT (EFARS)

### PART 15 — CONTRACTING BY NEGOTIATION

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(3) Size of Job. Work of \$100,000 shall be weighted at .12. Work estimated between \$100,000 and \$5,000,000 shall be proportionately weighted from .12 to .05. Work from \$5,000,000 to \$10,000,000 shall be weighted at .04. Work in excess of \$10,000,000 shall be weighted at .03. It should be noted that control of fixed expenses generally improves with increased job magnitude.

(4) Period of Performance. Work not to exceed 1 month is to be proportionately weighted at .03. Durations between 1 and 24 months are to be proportionately weighted between .03 and .12. Work in excess of 24 months is to be weighted at .12.

(5) Contractor's Investment. To be weighted from .03 to .12 on the basis of below average, average and above average. Consider the amount of subcontracting, Government-furnished property or data such as surveys, method of making progress payments, and any mobilization payment items.

(6) Assistance by Government. To be weighted from .12 to .03 on the basis of average to above average. Consider use of Government-owned property, equipment and facilities, expediting assistance, etc.

(7) Subcontracting. To be weighed inversely proportional to the amount of subcontracting. Where 80% or more of the work is to be subcontracted use .03. The weighting should be increased proportionately to .12 where all the work is performed by the contractor's own forces.

#### **15.404-73-101 Alternate structured approach for architect-engineer contracts.**

(a) The pre-negotiation profit objective for a firm-fixed-price architect-engineer (including surveying and mapping) contract, contract modification, or task order will be determined as described below. The profit objective for all other types of A-E contracts will be determined in

accordance with DFARS 215.404-71.

Profit Objective = Cost x (Technical Complexity Factor + Length Factor + Support of Socioeconomic Program Factor)

Where:

(1) Cost is the total estimated costs, including general and administrative costs, of the prime contractor and any subcontractors, exclusive of any profit. However, normal profit need not be deducted from the prices for commercial supplies and services (such as airfares, reproduction, lab tests, express mail and materials) in developing the cost base.

(2) Technical complexity factor will vary from 0.05 for low complexity (design of simple road repaving or routine boundary survey verification) to 0.10 for high complexity (design of nuclear chemistry laboratory or the design of the remediation of a very unusual and complex hazardous waste site). Consider the nature of the work, degree of management involvement required, schedule constraints, amount of Government assistance, and availability of design criteria.

(3) Length factor is .02 for a contract action of 1 month or less, and increases proportionately to 0.04 for a contract action of 21 months or longer. Consider the time necessary to complete the substantive portion of work, including option periods.

(4) Support of socioeconomic programs factor will vary from 0.0 for a prime contractor (including a small business prime contractor) who plans no subcontracting, to 0.02 for a contractor who demonstrates exceptional program support. Consider the contractor's past record as well as the instant contract with regard to mentoring and subcontracting with small businesses, small disadvantaged businesses, and historically black colleges and universities and minority institutions.

## ENGINEER FAR SUPPLEMENT (EFARS)

### PART 15 — CONTRACTING BY NEGOTIATION

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(b) When the facilities capital cost of money is proposed by the contractor and verified, reduce the profit objective as described in DFARS 215.404-73(b)(2).

#### **15.406 — Documentation.**

##### **15.406-1 -- Prenegotiation objectives.**

(a) AFARS 15.406-1 requires a Prenegotiation Objective Memorandum (POM), which is the prenegotiation portion of a Price Negotiation Memorandum (PNM). Each Chief of Contracting shall establish local procedures for preparation, review and approval of POMs subject to the following: Review and approval shall be at the lowest practicable level appropriate for the complexity, risk and dollar value of the action. Ordinarily, review and approval of a POM for a small or routine action prior to negotiation is not required. Conversely, review and approval of the POM for complex, risky, and/or high dollar value actions shall be accomplished prior to negotiation.

##### **15.406-3 – Documenting the negotiation.**

(a) FAR 15.406-3 requires a Price Negotiation Memorandum (PNM). Each Chief of Contracting shall establish local procedures for preparation, review and approval of PNMs subject to the following: For contract actions valued at more than \$500,000, PNMs shall be approved at a level above the contract negotiator. Ordinarily, review and approval of a PNM should be concurrent with the review and approval of the final contract action.

##### **15.490 – Follow-up on contract audit reports.**

##### **15.490 – 1 Responsibilities.**

(b)(2) Directors/Chiefs of Contracting shall ensure that contracting officers, both Procuring Contracting Officers (PCOs) and Administrative Contracting Officers (ACOs), the Contract Audit

Followup (CAF) Monitor and the Monitor's supervisor (at least one level above) must have a factor (related to the follow-up duties described immediately below) included in their performance objectives and resulting performance appraisal(s).

(c) Chiefs of Contracting shall –

(1) Demonstrate personal interest in all contract audit reports, tracking and assisting subordinate contracting officers (PCO and ACO) in the resolution and disposition of those audit recommendations which appear unlikely to be resolved within six months of the date of an audit report.

(2) Establish a system where both PCOs and ACOs, on a routine basis, directly report their Contract Audit Followup related actions and seek advisement from the Chief of Contracting.

##### **15.490-2 Tracking of contract audit report recommendations.**

(a) The Chiefs of Contracting shall be responsible for centralized tracking of all contract audit reports.

##### **15.490-3 Reporting.**

(a) Electronic transmission of the report must be received by HQ, USACE, ATTN: CEPR-A no later than the fifth calendar day following the end of March and September. Reports shall be transmitted using the "IG SEMIANNUAL" (DELIMITED ASCII TEXT) screen prompt.

(b) Audits reported as 6-12 months old, unresolved or overage in the "Status Report on Specified Contract Audit Reports," shall have an Overage Audit Review Board Reportable Audit Action Plan prepared and forwarded through successively higher headquarters to HQ, USACE, ATTN: CEPR-A no later than ten calendar days following the end of March and September. The action plan shall be sufficiently detailed to include

## ENGINEER FAR SUPPLEMENT (EFARS)

### PART 15 — CONTRACTING BY NEGOTIATION

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all requirements stated in AFARS 15.890-4(c)(2).

#### **15.490-4 Overage Audit Review Boards.**

(c )(2)(vi) Each audit brought forward to the Overage Audit Review Board shall in the Overage Audit Review Board Reportable Audit Action Plan include a milestone plan to achieve proper resolution and disposition.

#### **SUBPART 15.5 — PREAWARD, AWARD, AND POSTAWARD NOTIFICATIONS, PROTESTS, AND MISTAKES**

##### **15.503 Notifications to unsuccessful offerors.**

(a) Preaward notices. See 36.607(a) for architect-engineer contracts.

**15.505 Preaward debriefing of offerors.** See 36.607(b) for architect-engineer contracts.